

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR MDL No.: 15-md-02666 (JNE/DTS)
WARMING PRODUCT LIABILITY
LITIGATION

This Document Relates To:

MARIA MCGUIRE, as Executor of the
Estate of JOHN MCGUIRE, Deceased,

Civil Action No.: 18-cv-02080

Plaintiff,

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Maria McGuire, as Executor of the Estate of John McGuire, deceased, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1828], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

FACTS AND ARGUMENT

Mr. John McGuire contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel diligently worked to obtain medical records and billing records to move forward with the case. On July 20, 2018, counsel filed the current action to comply with what they believed to be the applicable statute of limitations deadline for the relevant claim.

Efforts to have Maria McGuire complete the Plaintiff Fact Sheet began soon after the case was filed but have been complicated by the inability to obtain the complete medical records from the initial arthroplasty surgery. Since Mr. McGuire is deceased, the medical facilities require that the executor sign all medical authorizations. Maria McGuire is elderly, so her son requests that we send documents to him, and he then delivers them to his mother. Therefore, there has been additional delays with obtaining signatures from the executor and requesting the appropriate records which are not present in most other cases. A medical records request regarding the relevant records was placed some time ago; however, the medical facility has recently informed Counsel that records for the time frame requested are not available. Counsel has had to modify the medical records request and is still awaiting the appropriate records to complete the Plaintiff Fact Sheet.

While counsel has diligently continued their attempts to obtain the medical records, those efforts have not been successful to date. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim. Counsel for Plaintiff believes that additional time will allow them to obtain the appropriate medical records for Mr. McGuire and complete the Plaintiff Fact Sheet.

CONCLUSION

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Plaintiff be given an additional ninety (90) days so that counsel can try to obtain the necessary medical records for Mr. McGuire to allow his executor the opportunity to provide the necessary information to complete the Plaintiff Fact Sheet and to continue the case.

Dated: March 12, 2019

KENNEDY HODGES, LLP

By: /s/ Gabriel A. Assaad
David W. Hodges
dhodges@kennedyhodges.com
Gabriel A. Assaad
gassaad@kennedyhodges.com
4409 Montrose Blvd. Ste 200
Houston, TX 77006
Telephone: (713) 523-0001
Facsimile: (713) 523-1116

ATTORNEYS FOR PLAINTIFF